Filed 10/1/03 Michael J. v. Sup. Ct. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MICHAEL J., Petitioner, v. THE SUPERIOR COURT OF THE COUNTY OF SAN BERNARDINO, Respondent; SAN BERNARDINO COUNTY DEPARTMENT OF CHILDREN'S SERVICES, Real Party in Interest.	E034204 (Super.Ct.No. J181577) **OPINION**

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Raymond L. Haight, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

Harold Gun Lai, Jr., for Petitioner.

No appearance for Respondent.

Ronald D. Reitz, County Counsel, and Regina A. Coleman, Deputy County Counsel, for Real Party in Interest.

Petitioner Michael J. is the father of Michelle J. and the stepfather of A.C. and M.F. Father filed this writ petition pursuant to California Rules of Court, rule 39.1B challenging an order setting a Welfare and Institutions Code section 366.26[1] permanency planning hearing as to Michelle J. Father contends the San Bernardino County Department of Children's Services (DCS) failed to provide reasonable reunification services to him, and therefore the juvenile court erred in setting a section 366.26 hearing. For the reasons provided below, we reject Father's challenge and deny his petition.

I

FACTUAL AND PROCEDURAL BACKGROUND

Father and Mother had been married for five years, and they had long histories of substance abuse. On April 9, 2002, DCS filed a section 300 petition on behalf of Michelle, who was then 14 months old.[2] The petition alleged that Michelle's parents had a history of "extensive, abusive and chronic use of drugs or alcohol and [had] resisted treatment for the problem during the three year period immediately prior to the filing of the petition . . . or [had] refused to comply with a program of drug or alcohol treatment described in the case plan on at least two prior occasions, even though the programs were available and accessible." (Capitalization omitted.) The petition further alleged that Mother was incarcerated and was unable to care for Michelle; that Father was "being kicked out of the military due to having no less than 3 positive drug tests for

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[1] All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

methamphetamine, since January 2002" (capitalization omitted); and that Father was being evicted from military housing, which made him unable to provide adequate housing for Michelle.

At the April 10, 2002, detention hearing, the court found that continuance in the home of the parents was detrimental to Michelle and her half-siblings and ordered the children removed from the home and detained in confidential shelter/foster care. Reunification services were ordered for the parents.

On April 25, 2002, the children were moved to a confidential joint foster care placement in Joshua Tree, California. On that same day, the social worker met with the parents, reviewed the reunification service plan, and gave the parents referrals to parenting and substance abuse treatment programs. The social worker reported that Michelle's parents were living in a single room in a boarding house in Barstow that was not appropriate for the children. Drug abusers and child molesters were said to frequent the boarding house.

At the May 7, 2002, jurisdictional/dispositional hearing, the court found the allegations in the section 300 petition to be true, declared Michelle a dependent of the court, placed her in the care and custody of DCS, and maintained her in foster care. The court then approved the family reunification services plan and ordered the parents to participate. Visitation between Michelle and her parents was ordered a minimum of once a week to be arranged and supervised by DCS. Father's reunification plan required

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[2] On this same day, section 300 petitions were also filed on behalf of half-

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Father to participate and complete a parenting education program and an out-patient substance abuse program, maintain a stable and suitable home, demonstrate an ability to financially provide for the child, refrain from the inappropriate use of illegal drugs, drug test, properly provide for the child, and comply with all orders of the court.

In a status review report dated November 6, 2002, the social worker reported that Father completed a parenting education program on July 30, 2002, but that he was dismissed from the substance abuse program on September 18, 2002, because he had 11 absences. Father also showed such little improvement during his substance abuse counseling that the counselor terminated services. Further, two out of three completed drug tests for methamphetamine were positive. (CT 141} The social worker reported that Father had been visiting Michelle regularly pursuant to his reunification service plan. The social worker opined Father, who had been dishonorably discharged from the military, did not acknowledge that the problems were real and that he needed help.

The six-month review hearing came before the court on November 6, 2002, but was set contested and continued until January 6, 2003. The court ordered half-siblings M.F. and A.C. placed with their respective fathers, who both resided in Riverside, California. Michelle was maintained in foster care but subsequently placed in the home with her half-sister, A.C.

On December 5, 2002, the parents attended mediation, which resulted in DCS agreeing to offer the parents an additional six months of services. The parents were

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siblings A.C. (age 13) and M.F. (age 10).

informed that they had to complete the following four requirements before Michelle could be returned to their custody: (1) Father had to complete substance abuse counseling; (2) both parents had to have two to three drug patch tests per month; (3) the parents had to have a home and income to support the child; and (4) visitation with Michelle would be correlated with the visitation schedule for A.C.

On December 13, 2002, the court vacated the January 2003 hearing date. At that time, the court was informed that Michelle's half-siblings had been placed with their respective fathers and that Michelle had been moved to a new confidential placement. The court found that reasonable services had been provided to the parents and that Michelle's placement in foster care remained appropriate. The parents, who were present in court, were notified that the next six months would be the last six months of services. The matter was then continued to June 16, 2003, for a 12-month review hearing.

In a status review report dated June 16, 2003, the social worker recommended that services to the parents be terminated and that a section 366.26 hearing be set. The report indicated that the parents had not contacted DCS since January 2003 and that the whereabouts of the parents were unknown. Father had been re-enrolled in a substance abuse treatment program, but he failed to drug test and attend the program. When the social worker spoke with Father on January 6, 2003, Father reported that he and Mother were no longer together and that he did not know where she was. Father thereafter moved without leaving a forwarding address or contact number. The social worker had been unable to contact Father since then, and Father never called the social worker to schedule any visits with Michelle. The parents, however, contacted the social worker on

May 13, 2003, showing that the parents had the ability to contact DCS but chose not to do so. The social worker opined that the parents had failed to comprehend the importance of eliminating the protective issues that brought the family to the attention of DCS and the court and therefore recommended that services be terminated.

Although Father and Mother were served with notice of the June 16, 2003, 12-month review hearing, they were not present at that hearing. The matter was then continued to July 25, 2003, for a contested hearing at Father's request. The July 25, 2003, hearing, at which Father was present, was continued to August 4, 2003, as Father's attorney was unavailable.

At the contested 12-month review hearing on August 4, 2003, neither parent was present, even though they had notice of the hearing. Father's counsel requested a continuance, informing the court that Father had called his office and told him that he was unable to get a bus in time to be at the hearing and that Father wished to be present during the contested hearing. The court denied the continuance, finding no good cause to continue the matter.

Thereafter, the social worker testified that she had spoken to Father on June 10 and 27, 2003, and that during the telephone conversation on June 10, 2003, Father informed the social worker of his new address in Barstow. During her June 10 telephone conversation with Father, she made arrangements for Father to go into the DCS office on July 1, 2003, to review his case plan and receive a gas voucher and arranged a visit with Michelle on July 9, 2003, but Father never showed up for the appointment. At that time, the social worker also discussed Father's case plan and informed him that he needed to

complete the substance abuse counseling program in which she had enrolled him a second time and to come to the DCS office to drug test. According to the social worker's notes, Father last visited Michelle on or about September 20, 2002, and Michelle's placement with her half-sister A.C. fell through in November 2002. Thereafter, Michelle had been moved to another confidential placement in Joshua Tree. When the parents visited Michelle in Joshua Tree, the foster parents monitored the visits, because the social worker could not drive to Joshua Tree.

Following argument from counsel, the court found that the parents failed to participate regularly and make substantive progress in their court-ordered reunification treatment plan and that return of Michelle to her parents' custody would create a substantial risk of detriment to the safety, protection, or emotional or physical well-being of the child. The court also found that notice had been given as required by law and that reasonable services had been offered to Father and Mother. The court thereafter terminated reunification services to Father and Mother and set the matter for a section 366.26 selection and implementation hearing.

On August 12, 2003, Father filed a notice of intent to file a writ petition pursuant to California Rules of Court, rule 39.1B.

II

DISCUSSION

Father contends the juvenile court erred in terminating reunification services and setting a section 366.26 hearing. Specifically, Father argues the court erred in finding that reasonable reunification services had been provided to him, because the reunification

service plan called for "the splitting up of the siblings" and placing Michelle "way out" of the area in Joshua Tree. DCS responds that Father waived this issue on appeal because he never objected to the adequacy of reunification services offered to him or Michelle's placements in the court below. We are inclined to agree with DCS.

"Many dependency cases have held that a parent's failure to object or raise certain issues in the juvenile court prevents the parent from presenting the issue to the appellate court. [Citations.] As some of these courts have noted, any other rule would permit a party to trifle with the courts. The party could deliberately stand by in silence and thereby permit the proceedings to reach a conclusion in which the party could acquiesce if favorable and avoid if unfavorable. [Citation.]" (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338-1339, and cases cited therein; see also *In re Jesse W.* (2001) 93 Cal.App.4th 349, 355.) This policy applies full force to the instant case, as neither the court nor DCS was put on notice that reunification services were inadequate or that Father disagreed with Michelle's placements, even though he had ample opportunity to make that objection to it. Father failed to object when on April 25, 2002, the children had been moved to a placement in Joshua Tree and when Michelle was maintained in confidential foster care after her half-siblings were placed with their respective fathers. Thus, Father's attempt to challenge the adequacy of reunification services is an attempt to raise a new issue which was not presented to the trial court. We find the issue waived, and we need not consider it further. (*In re Aaron B.* (1996) 46 Cal.App.4th 843, 846 [" . . . '[A] party is precluded from urging on appeal any point not raised in the [juvenile] court'"].)

Even assuming Father preserved this issue for appeal, we would find the juvenile court did not err in terminating reunification services to him.

On appeal, the trial court's finding that reunification services were reasonable is reviewed for substantial evidence, which means that all reasonable inferences must be drawn in favor of the finding and the record must be viewed in the light most favorable to the finding. (*In re Maria S.* (2000) 82 Cal.App.4th 1032, 1039; *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010.)

For a child under the age of three at the time of removal, reunification services are limited to six months unless the court finds that (1) reasonable services were not provided; or (2) there is a substantial probability that the child may be returned within six months. (§ 366.21, subd. (e).)

The department is generally required to make a good faith effort to provide reunification services tailored to the unique needs of each family by identifying the problems leading to the removal of the children, offering services designed to remedy those problems, maintaining reasonable contact with the parents, and making reasonable efforts to assist the parents when compliance proves difficult. (*In re Maria S.*, *supra*, 82 Cal.App.4th at p. 1039; *Mark N. v. Superior Court*, *supra*, 60 Cal.App.4th at pp. 1010-1011.) However, the department is not required to take parents by the hand and lead them to counseling or other services. (*In re Christina L.* (1992) 3 Cal.App.4th 404, 414; *In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5.) After all, reunification services are voluntary; they cannot be forced onto parents who are unwilling or indifferent. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1365; *In re Jonathan R.* (1989)

211 Cal.App.3d 1214, 1220.) Furthermore, because it is almost always true that better services could be provided in an ideal world, we merely determine whether the services provided were reasonable under the circumstances of this case. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 48; *In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

Applying these principles and under the circumstances of this case, we find substantial evidence to support the trial court's finding that services were reasonable. Michelle was 14 months old when she was removed from Father's custody. Father and Mother received about 16 months of reunification services during Michelle's dependency. And throughout the dependency proceedings, Father resisted treatment for his drug problem. During the last six months, Father also failed to maintain contact with the social worker, inform DCS of his contact number, visit Michelle, drug test, and attend drug counseling. On the other hand, during the review period, the record shows that DCS responded appropriately to Father's drug problem. The social worker repeatedly referred Father to a substance abuse program and had him enrolled in the program for a second time after he initially failed to attend. DCS also offered adequate visitation with his child to Father. The reunification plan was specifically tailored to correct the problems that led to the removal of Michelle.

Father, however, claims his reunification plan was not appropriate and/or designed with reunification in mind because Michelle had been placed in a "remote area" away from her father and half-siblings. We reject this contention. On April 25, 2002, Michelle was initially placed with her half-siblings in a home in Joshua Tree. Michelle's parents, who were kicked out of military housing for drug use, moved to Barstow. The record

indicates that the parents initially visited with Michelle in Joshua Tree and that DCS provided the parents with gas vouchers to visit Michelle. Michelle's half-siblings were subsequently placed with their respective fathers in Riverside. The social worker then attempted to place Michelle with her half-sibling A.C., but Michelle could not be placed with her half-siblings and had to thereafter be maintained in a confidential foster home. Thus, the record indicates DCS appropriately placed Michelle in a foster home.

Regardless, even if Michelle had been placed with either one of her half-siblings or closer to Father, the record indicates Father moved in January 2003 and failed to inform the social worker of his whereabouts or leave any forwarding address or contact information. Father did not contact the social worker to inquire about Michelle's placement or to arrange visits until June 10, 2003. Even after contact had been made, Father failed to appear for the appointment with the social worker to finalize visitation arrangements. Furthermore, during the last nine months of the dependency proceedings, Father did not even know where Michelle was residing. Hence, as DCS points out, Father's actions, or inaction, showed a complete lack of interest in Michelle's welfare and the development of a lasting father-daughter relationship. Substantial evidence shows that Father failed to reunify with Michelle not because of the location of Michelle's placement, but because he failed to regularly participate and make substantive progress in his reunification treatment plan. Father failed to consistently drug test; he failed to provide clean drug tests; he failed to attend drug treatment; he failed to find adequate housing; he failed to produce an income; he failed to visit Michelle; and he failed to keep the social worker informed of his whereabouts.

The juvenile court thus did not abuse its discretion by terminating reunification services and finding that reasonable services had been provided to Father.

III

DISPOSITION

The petition for extraordinary writ is DENIED.

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RICHLI
J.

We concur:

RAMIREZ
P.J.

McKINSTER
J.